

# Exhibit 4

## Thought Paper on Methods to Improve Division Activities in Support of Ecological Services' Wildly Important Goal

April 17, 2017

*Background:* The Division of Environmental Review is multifaceted and oversees multiple programs from the Regional perspective. We coordinate consultation and most permitting under section 7 of the Endangered Species Act, Non-Deepwater Horizon Natural Resource Damage Assessment and Restoration (NRDAR), policy related to mitigation and Fish and Wildlife Coordination Act, oil spill response and contaminant assessments, and environmental review of (and dissemination of guidance related to) energy projects (including renewable energy). We also host the Regional Hydrologist, who provides technical assistance and training to the ES field offices and other regional programs, and the Branch of Decision Support, which provides training and assistance in Species Status Assessments (SSA) and structured decision processes.

In April, 2016, the Southeast Regional Directorate released the Region's Vision Statement, which reads ***"Together, we will connect lands and waters to sustain fish, wildlife, and plants by being visionary leaders, bold innovators and trusted partners, working with and for people."*** The individual regional programs were then tasked with developing "Wildly Important Goals" (WIGs) in order to make this vision a reality. The WIG for Ecological Services is to ***"Conserve 30 species by the end of Fiscal Year 2017 through preventing the need to list, downlisting, or delisting."***

The Division considered our wide range of programs and responsibilities, and focused on improvements in our programs that would allow us to work smarter, faster, and more efficiently, with the goal of freeing up as much time and financial resources as possible. The main metrics we identified were 1) reduction in response time (to the customer), 2) reduction in staff time in processing, and 3) a corresponding reduction of cost. Any human and financial resources saved would then be applied directly towards the WIG. However, it is important to note that many of our programs already directly contribute to the WIG (e.g., needed endangered species research can't happen without a recovery permit, consultation through the ESA helps to avoid and minimize impact to our target species).

A breakdown of possible improvements on a program by program basis follows....

### Branch of Decision Support (Angela and Erin)

- Develop Branch workload allocation tool – Estimates optimal allocation of Branch workload given regional priorities (especially the WIG)
- Continue to provide training, development guidance, review, and writing of SSA documents

- 4-Day Structured Decision Making (SDM)/SSA Training delivered to field offices every 3 months – Vero Beach (Completed March 2017), Cookeville, Tennessee (June 2017), and Jackson, MS (September 2017)
- Complete the SSA Workload Heuristic Tool currently under development – Estimates resources needed based on SSA complexity measures
- Pair all FY18 Species Leads with SSA Support (either from the Branch or the National SSA Framework Implementation Team) – to help the FOs save time (both in terms of finding appropriate tools and capacities) and ensuring smooth transition to a new process
- Provide, where possible, facilitation capacity for SSA development which fosters efficient use of staff and expert time, as well as, efficiently incorporating most up-to-date information in status assessments.
- Structured Decision Making (SDM)
  - Be available to provide decision support to help optimize allocation of limited resources (e.g., FTEs and dollars for conservation actions) to most efficiently achieve program goals.
  - Improve listing decisions – Branch developed and facilitates new cooperative, listing decision process to minimize cumulative time spent making decisions and maximize transparency.
  - Maximize use of NRDAR as a conservation tool – Get maximum conservation value from NRDAR funds via strategic allocation and investment, possibly involving restructuring the program.
  - Improve section 7 efficiencies and workload allocation in Florida through development of a workload allocation tool that allocates more FTEs to projects with the highest conservation value.

#### Planning for Infrastructure and Energy Development in the Southeast (Christine)

Explore further delegation of signature authority for ER assignments. This involves balancing trust with risk of lower level signature/less review. All assignments now go directly from HQ to Field Office staff with limited RO staff involvement/oversight. In addition, signature levels have been delegated down to limit unnecessary review of staff and time. This includes multiple FOs involved and the trust to allow the lead FO has authority to sign off on the project. There may be some additional opportunities to delegate even further but additional risk should be discussed and acknowledged by management before doing so. Requests for numerous briefings and data calls and even lawsuits can quickly undo the timesaving that occurred from delegation.

*Streamlining the process only works if field level delegation is supported. Overturned or influence decisions can easily create the opposite effect.*

We also should continue to explore and promote programmatic agreements and advance planning tools (balancing cost versus streamlining and risk). An example of a high cost, high

efficiency, low risk tool is the Information for Planning and Conservation (IPAC) website. This system allows project proponents to streamline the Service's environmental review process. Although the development and inputting of information into the system was extensive the expectation is that now that the system is live it will significantly reduce staff review time. This is especially true for Department of Transportation projects, one of the major contributors to the IPAC system.

Other examples, ranging in cost and risk, that demonstrate the payoff of planning ahead and streamlining consultation include: cell tower self-certification, Indiana bat conservation bank (KY example), Alabama's Strategic Habitat Unit maps (SHU), North Carolina's Wind Risk Maps, and Georgia Field Office efforts with solar development maps. All of these have demonstrated benefits. Project leaders could discuss cost and risk versus Efficiency with each of these approaches, and use these examples to do similar things in their states.

**We need to continue to identify areas where we will no longer engage.** Determine upfront and communicate openly where the Service will no longer engage in project review. An example of this is the decision by the Migratory Bird program to not review cell towers less than 200ft. We could utilize the LCC conservation blueprint to help determine those areas we will no longer review. Putting "no action areas" on each office's website makes this transparent to our partners, private developers, and the public that we no longer review these areas. Generally there are more regulations where there are more people and less where there aren't people. Often this results in development pressure in areas that are remote and not always the most efficient. By doing a map of where they don't need a permit we may be able to encourage more infrastructure and power generation close to population centers rather than in remote less regulated landscapes.

**We likewise need to identify areas where we will fully engage.** We should also communicate to the public areas of high importance and the Service's commitment to fully engage with all of our authorities (NEPA, 404, ESA, FWCA, Migratory Birds and State Partnerships) on projects proposed in our high priority areas. Often time spent on NEPA review (e.g., responding to scoping notices) or Fish and Wildlife Coordination Act review early in the project, the less time you need to spend on the ESA consultation.

**Identify mitigation goals for areas or species** Finally, high priority areas should also be areas we target to encourage the development of high priority Mitigation Banks – Identification up front of where and what types of mitigation are appropriate will help streamline processes for when energy development companies approach the Service.

Federal Regulatory Hydropower Relicensing (Wilson Laney – placeholder).

From the DER standpoint the units of measure we are focusing on are staff time, response time, and \$\$\$. For instance having a FERC hydropower relicensing prioritization plan in place could lead to an agreement with the Office of the Regional Solicitor for automatic intervention on qualifying projects, saving vast amounts of staff time (and therefore \$\$\$) in having to prepare and

review materials to request solicitor assignment through the RD's office. It could shorten response time by 1-2 weeks.

### Interagency Consultation (Jerry Ziewitz)

Consultation is the process required of Federal agencies under ESA §7(a)(2) when they propose actions that may affect listed species and critical habitats. In consultation with the Service, agencies must insure that their actions are not likely to jeopardize species or destroy critical habitat. The Service has no authority to significantly alter federal actions that comply with this mandate. The terms and conditions we include in Incidental Take Statements to exempt the taking of listed wildlife that is incidental to such actions are limited to minor modifications that are necessary and appropriate to minimize such taking. Therefore, the procedural mandate of §7(a)(2) does not itself advance the conservation purpose of the ESA, because actions that are not likely to jeopardize or destroy do not necessarily contribute to recovery. With rare exceptions, Federal actions achieve progress towards recovery when agencies explicitly propose to do so, consistent with their mandate under §7(a)(1) to use their authorities for the conservation of listed species.

The challenge of using consultation as a recovery tool is almost entirely one of creating a conservation culture among Federal agencies. Agency personnel must understand their §7(a)(1) responsibility before they can exercise it. We need good relationships with action-agency personnel to bring about that understanding. Good relationships open doors to collaborating on practical ways of building conservation progress into federal actions. Our personnel are the species experts. Their personnel are the action-planning experts. We must work together to achieve the purpose of a federal action in a way that also furthers the purpose of species' recovery. This is why §7 is titled "Interagency Cooperation."

One key incentive to building conservation progress into Federal actions is to substantially streamline the consultation process associated with those that are crafted to contribute to species' recovery. Agency budgets are tight, and getting tighter. Few agencies can afford significant discretionary investments in conservation, but for most, time is money. Significant savings in the cost of surveys and biological assessments, along with abbreviated consultation schedules and predictable outcomes, can justify adopting standard impact avoidance, minimization, and compensation measures as part of a program of Federal actions. We have several examples of programmatic consultations that represent a "win-win" outcome for action agencies and the species their actions affect, such as the recently completed program of federally-funded transportation projects that may affect the Indiana bat and northern long-eared bat.

I propose that we systematically identify the potential for conservation progress through programmatic consultations. This will involve analyzing our consultation workload by action agency and species at the regional scale. Where can we get the biggest bang for the buck for both action agencies and species through programs of Federal actions that incorporate conservation

measures? For what agencies and species have we not already adopted suites of avoidance and minimization measures that would support advance concurrence with “not likely to adversely affect” determinations? For what species have we not already developed advance compensatory mitigation strategies that federal agencies might use programmatically to offset the unavoidable impacts of their actions? Answering these questions will allow us to focus on those areas and agencies that could most effectively contribute to species conservation through the consultation process.

#### Natural Resource Damage Assessment and Restoration (NRDAR)

NRDAR, which is authorized under the Oil Pollution Act, CERCLA, and Clean Water Act, is a tool to ensure restoration of habitats impacted by contaminant releases. It has the potential for large settlements that can be used for land purchase, habitat restoration, and non-Federal match. Approximately \$6 million in money disbursed to DOI bureaus annually from NRDA fund, administered by Office of Restoration and Damage Assessment, and additional monies available from Oil Spill Liability Trust Fund. Assistance is potentially available from Deepwater Horizon NRDAR Field Office. It is a tool used by some other regions to great effect.

An increased emphasis in NRDAR could result in additional “boots on the ground,” more restoration work throughout the region and additional money (settlement funds) that can be used as non-Federal match to grow conservation projects.

We have already started a critical review of the Southeast Region NRDAR program to determine if we are fully utilizing this powerful tool. We are assembling a team of ES and Deepwater Horizon personnel (including some field office biologists working as case managers) in an effort to identify the objectives of a successful regional NRDAR program, and identify various organizational/structural alternatives to address those objectives. We plan on reporting results of this activity to senior Southeast Region leadership for further discussion.

Through this effort we hope to improve efficiency, as well as fully engage in NRDAR in order to bring additional monies to bear on our WIG.

#### Building Efficiencies in the Section 10(a)(1)(A) Recovery Permits Program (Karen Marlowe):

Recovery permits issued under section 10(a)(1)(A) of the Endangered Species Act (ESA) authorize take, import, export, or interstate commerce, all of which are prohibited under the ESA, if such activities are necessary to conduct scientific research that promotes conservation (i.e., recovery) of the species or to enhance the propagation or survival of the species (e.g., captive propagation and reintroduction). Without these permits many critical recovery tasks, specified in Recovery Plans prepared in accordance with section 4 of the ESA, cannot be implemented. Permits for take and interstate commerce of native species are handled by the Regional Offices, while import and export remain the provenance of the Division of Management Authority.

For well over a decade, the Southeast Region has experienced serious delays in processing recovery permits, due to staffing shortages, lack of training and support of the recovery permits staff, increased workload as a result of multiple new endangered/threatened species listings, and, to some extent, a lack of recognition of the importance of a well-functioning recovery permits program to achieve recovery tasks on the ground. As a result, permits that are supposed to take only 90 or so days to process are taking years. Researchers lose funding opportunities and the ability to conduct critical research, consultants lose jobs, and Field Offices fail to obtain critical information needed for the conservation of the species within their State(s). Bottom line: recovery permits facilitate addressing our WIG through providing the authorization needed to do critical work leading to downlisting and delisting threatened and endangered species.

*Measures to Achieve More Recovery Permit Efficiency in the Southeast Region*

Completed in the past year and/or in the works:

- Make recovery permits valid for 5 years, rather than 2;
- Eliminate need to issue paper permits and send them to permittees by email rather than hard copy by mail;
- Eliminate issuance of unnecessary permits, such as permits issued for facilities to accept and rehabilitate sea turtles and other endangered/threatened species, 4(d) rule species, and activities covered by regulatory exemptions;
- Provide full-time administrative support to the Recovery Program Coordinator for handling in-processing of applications and fees and issuance of simpler permit types (e.g., interstate commerce);
- Batch the *Federal Register* (FR) notices for issued permits, rather than each Region publishing their own notices, and have these batched notices prepared by Headquarters, using information from SPITS;
- Seek assistance in the form of details by biological staff to help with the current backlog (currently approximately 120 applications in backlog).

Recommended:

- Streamline the Recovery and Interstate Commerce permit applications and make them more user-friendly and understandable in an effort to increase the quality of applications received;
- Create ability to accept fees electronically;
- Create a web-based system that allows permit applicants to complete and submit their applications and annual reports on-line;
- Increase staffing levels in the recovery permitting program to address, once and for all, the backlog of permit applications. Consider the development of a recovery permitting branch. Additional staff would allow the Recovery Permit Coordinator (RPC) to create checklists for permit application reviews, standard operating procedures, training

materials, etc., and allowing the RPC to provide overall quality control over the work products of the branch; and,

- Work with Headquarters and Region 5 to streamline processing of applications that involve Region 5 species (e.g., obtaining necessary biological opinions and reviews) and eliminate the need for us to continue handling multi-regional permit applications that should be handled by Region 5.

Still awaiting one pagers in the following areas...

HCPs, David Dell

Fish and Wildlife Coordination Act – David Walther

SE aquatic resources – John Faustini